

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF NEW YORK**

WANDA N.,

Plaintiff

v.

6:21-cv-00358

COMMISSIONER OF SOCIAL SECURITY,

Defendant.

**THOMAS J. McAVOY,
Senior United States District Judge**

ORDER

Before the Court is Plaintiff's request for an award of attorney's fees in the amount of \$6,282.63 incurred in this appeal of the Commissioner of Social Security's denial of Plaintiff's benefits. See dkt. # 17. Plaintiff contends she is entitled to attorney's fees pursuant to the Equal Access to Justice Act, 28 U.S.C. § 2412. She contends that she was the prevailing party, that the government's litigation position was not substantially justified, and that her assets are worth less than \$1 million. Plaintiff indicates that she has agreed to assign any attorney's fees award under the Equal Access to Justice Act to her attorney for services in connection with this federal court action.

The Commissioner has no objection to Plaintiff's request for attorney's fees, but indicates that the application was premature when made because less than 60 days had passed from the time the Court entered judgment on Plaintiff's appeal. See dkt. # 19 at 1-2 (citing *Jones v. Astrue*, No. 10-6625L, 2012 WL 3686089, at *1 (W.D.N.Y. Aug. 24, 2012) ("Final judgment" is deemed to have occurred at the time the

government's right to appeal lapses—specifically, 60 days after entry of judgment."); 28 U.S.C. § 2107(b)(2) (United States agency has 60 days to appeal)). The Commissioner proposes that the Court deny Plaintiff's application for lack of subject matter jurisdiction, or, to avoid duplicative future filings, hold the motion in abeyance until final judgment had entered. *Id.* at 2.

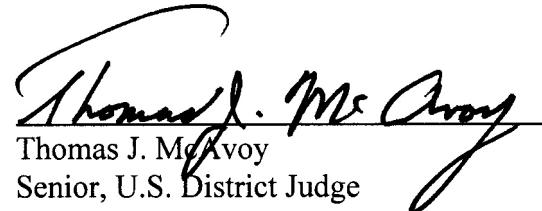
The Court opted to hold the motion in abeyance and a final judgment has now been entered in this case.

Conclusion

Having examined the parties' filings and counsel's billing records, the Court finds that the fees sought are recoverable and reasonable. The Plaintiff's motion for attorney's fees, dkt. # 17, is hereby **GRANTED**. Attorney's fees are awarded to Plaintiff in the amount of \$6,282.63, with such fees being payable directly to Plaintiff's counsel.

IT IS SO ORDERED.

Dated: May 1, 2023



Thomas J. McAvoy
Senior, U.S. District Judge